

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT KADROVACH and LYNDA
KADROVACH,

UNPUBLISHED
March 26, 1999

Plaintiffs-Appellants,

v

No. 204200
Calhoun Circuit Court
LC No. 97-000595 AV

WARREN L. WATKINS,

Defendant-Appellee.

Before: O'Connell, P.J., and Jansen and Collins, JJ.

PER CURIAM.

Plaintiffs appeal by leave granted the circuit court order affirming the judgment of the district court. We reverse and remand.

Plaintiffs are defendant's aunt and uncle and adoptive parents. Plaintiffs loaned defendant the sum of \$500, secured by a promissory note providing for repayment with an interest rate of one percent per annum. Subsequently, plaintiffs indicated that defendant could have use of their credit card. Defendant agreed to pay charges he incurred with the card.

Eventually, plaintiffs were required to pay an outstanding card balance of \$3,850. Plaintiffs filed suit in 10th District Court seeking both payment of the \$500 loan and reimbursement of the card balance. Defendant asserted the affirmative defense of usury, and contended that the card interest rate of 14.1 percent was usurious for a loan between individuals. MCL 438.31; MSA 19.15(1). The district court rejected plaintiffs' assertion that they did not loan funds to defendant, and found that plaintiffs charged a usurious rate of interest. The district court entered judgment in favor of plaintiffs in the amount of \$62.50 on the card transaction, and in the amount of \$500 plus interest on the promissory note. The court awarded defendant costs and fees in the amount of \$2688.50. MCL 438.32; MSA 19.15(2). The circuit court affirmed the judgment of the district court.

We review a trial court's factual findings for clear error, and review legal rulings de novo. *Omnicom of Michigan v Gianetti Investment Co*, 221 Mich App 341, 348; 561 NW2d 138 (1997).

We reverse the decision of the circuit court. The legal interest rate on a loan between individuals is five percent, unless the parties stipulate in writing to payment of a rate not exceeding seven percent. MCL 438.31; MSA 19.15(1). The purpose of the usury law is to protect a necessitous borrower from extortion. To accomplish this purpose, a court must look at the real nature of the transaction at issue. *Boyd v Layher*, 170 Mich App 93, 97; 427 NW2d 593 (1988). The finding of the district court, affirmed by the circuit court, that plaintiffs loaned funds to defendant, is clearly erroneous. MCR 2.613(C). Plaintiffs placed no sum of money with defendant, and defendant made no promise to repay any sum to plaintiffs. Plaintiffs sued only to recover sums they themselves were required to pay when defendant defaulted on his agreement to pay charges he incurred on the card. Defendant was allowed to use plaintiffs' credit card, and was required to pay the card balance. The credit card time differential rate of 14.1 percent was not usurious. *Corrigan v Insilco Corp*, 176 Mich App 262, 269; 439 NW2d 350 (1989). The prohibition against usury did not reach the instant transaction. Plaintiffs were entitled to recover interest on the credit card transaction. Because usury was not established, defendant was not entitled to costs and fees.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Jeffrey G. Collins